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A CATECHISM OF
COURT-MARTIAL DUTY
SECOND REVISED EDITION

MAJOR E. B. SINELLI

UC-NRLF



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School of
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SECOND REVISED EDITION.

A CATECHISM

OF

Court-Martial Duty

Arranged and Compiled by
MAJOR H. B. SPINELLI,
First Infantry, Texas Volunteer Guard,
Counsellor-at-Law.

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INTRODUCTION.

The Spanish-American War developed the weaknesses of our volunteer soldiers, not the least of which was a remarkable ignorance of military law and procedure among the officers. This was not the fault of the officers themselves, but was due to the fact that works on military law were costly and cumbersome, and that there existed no compact hand-book containing the principal features of court-martial duty. There was another reason for this deficiency in the fact that the ordinary man usually encounters many difficulties in the matter of memorizing works on military procedure, as much from lack of time as from the dryness of the subject, as well as from the large mass of secondary matter which they contain. To weed out the unimportant and to render the material the more readily assimilable has been my pleasant task in the preparation of this little catechism, which I hope will meet with the approval of my brother officers.

Everything herein contained bears the stamp of authority, for I have consulted and freely quoted from the "Manual for Courts-Martial," De Hart's "Military Law," Winthrop's Abridgement, Greenleaf on Evidence, and the Digest of Opinions of the Judge-Advocate General, in the preparation of this work.

With this introduction, I submit the book upon its merits.

H. B. SPINELLI.

Corpus Christi, Texas, December 10, 1899.

A Catechism of Court-Martial Duty.

PART FIRST

MILITARY TRIBUNALS.

1 Q. How many kinds of Military Jurisdiction are there?

A. Four: Military Government (the Law of Hostile Occupation); Martial Law at Home; Martial Law Applied to the Army; Military Law.

2 Q. What is Military Law, and whence derived?

A. Military Law is the legal system that regulates the government of the Military Establishment. It is a branch of Municipal Law, and is derived from the Constitution, Statutory Enactments of Congress, the Articles of War, the General or Special Orders of the Commanders of the Army, and the Decisions of the War Department.

3 Q. What is the Law of Hostile Occupation?

A. Military Government of a conquered territory. The power exercised by a belligerent, by virtue of his occupation of a conquered territory, over such territory and its inhabitants. It is a part of the Law of Nations.

6 A CATECHISM OF COURT-MARTIAL DUTY.

4 Q. What is Martial Law at Home, and upon what founded?

A. Military power exercised in time of war, insurrection, or rebellion, in parts of the country retaining their allegiance, and over persons and things not usually subject to it. It is derived from statutory provisions and founded on paramount necessity.

5 Q. What is Martial Law applied to the Army?

A. Military power extended, in time of war, insurrection, or rebellion, over persons in the military service, as to obligations arising out of such emergency, and not falling within the domain of military law, not otherwise regulated by law.

6 Q. How many kinds of Military Tribunals are there?

A. Two: Courts-Martial and Courts of Inquiry.

COURTS-MARTIAL.

7 Q. What is a Court-Martial?

A. A military judicial body, composed of commissioned officers only, which is organized in obedience to orders from proper authority, for the trial of offenses against military law.

8 Q. How many kinds of Courts-Martial are there?

A. Three: General Courts-Martial, Special Courts-Martial, and Summary Courts.

GENERAL COURTS-MARTIAL.

9 Q. What is a General Court-Martial?

A. A Court-Martial composed of any number of commissioned officers, not less than five nor more than thirteen, and a Judge-Advocate, constituted for the purpose of trying offenses of a serious nature. Not less than thirteen will compose this Court when that number can be convened without manifest injury to the service.

JURISDICTION.

10 Q. What is the jurisdiction of a General Court-Martial?

A. A General Court-Martial has exclusive original jurisdiction over officers, cadets, and candidates for promotion, and concurrent jurisdiction with the inferior Courts over all enlisted men other than candidates for promotion. It has original jurisdiction over the offense of fraudulent enlistment, over all offenses punished capitally, over felonies as defined in the 92d and 93d Articles of War, when committed in time of war, and over those offenses for which the limit of punishment prescribed by the President, or established by custom of the service, previous convictions being considered, shall exceed the forfeiture of one month's pay, or confinement with or without hard labor for one month, or both. It has jurisdiction, concurrent

with that of the inferior Courts, over all other offenses.

- 11 Q. In time of war, is the jurisdiction of Courts-Martial limited to persons in the military service?

A. It is not. It extends to all retainers to the camp, to all persons serving with the armies of the United States in the field, though not enlisted soldiers, and to all persons who aid or relieve or trade with the enemy, or give him information, and over all offenses coming under the 95th and 96th Articles of War.

- 12 Q. When does military jurisdiction usually end?

A. Upon the discharge of a soldier, or the dismissal or resignation of an officer.

- 13 Q. Are there any exceptions to this rule?

A. There are. Jurisdiction still attaches to discharged officers and soldiers guilty of frauds against the United States under the 94th Article of War, and discharged officers granted trial after summary dismissal, under Section 1230, Revised Statutes.

- 14 Q. A dismissed officer returned to the service by a new commission, and charges were brought against him for offenses committed before his dismissal. What was the action in the case, and why?

A. The Judge-Advocate General decided that the Court had no jurisdiction, because, the military jurisdiction having ceased when the officer left the service, it could not again be revived.

CONSTITUTION.

15 Q. By whom is a General Court-Martial instituted?

A. (1) By the President, in his capacity as Commander-in-Chief of the Army; or when a commanding officer whose province it would be to institute a General Court-Martial is himself the accuser; or upon the application of a dismissed officer; (2) By any general officer commanding an army or a territorial department; (3) For the trial of cadets, by the Superintendent of the United States Military Academy; (4) By the Commandant of United States Disciplinary Barracks.

CHARGES AND SPECIFICATIONS.

16 Q. How is a military offender brought before a Court-Martial?

A. By means of a charge, corresponding to the civil "indictment," brought by some competent person.

17 Q. What is a charge?

A. It is a complaint against a military person, consisting of two parts: the charge, wherein the nature of the offense is described; and the specification, wherein the particular facts which constitute the same are stated.

18 Q. What are the requisites of the charge?

A. That it be brief, and laid under the proper Article of War or other statute.

19 Q. What are the requisites of the specification?

A. That it shall, in a clear and concise manner, set forth sufficient facts to constitute the particular offense, and that dates shall be stated as nearly as possible, in order that it may fully appear that prosecution is not barred by limitation.

20 Q. Give an example of a specification subject to an exception as being *double*.

A. A specification alleging that the accused was absent without leave at various times between two dates, twenty days apart, because each absence was a substantive and distinct offense.

21 Q. Is the technical nicety requisite in a civil indictment also required in a specification?

A. It is not. A plain statement of the facts is sufficient, provided the legal offense itself be distinctly and accurately described, and the time and place be stated as carefully as possible. Where a single charge requires several specifications, the time and place, as nearly as possible, should be stated in each specification.

22 Q. What should always be done before preparing a charge?

A. The Articles of War and statutes relating to the Army should be carefully examined to ascertain if the alleged offense is specially provided for in any Article. If so, the charge should be laid under that Article. If not, the charge should be laid under the general Articles—the 95th or 96th, depending on the nature of the offense and the rank of the offender.

- 23 Q. Should the nature of the offense be such as to leave a doubt as to which of several Articles it would be proper to base the charge upon, what course should be pursued?

A. Several separate charges, one under each of the several Articles, should be preferred, so that the Court-Martial may fully judge of the nature of the offense.

- 24 Q. Where an offense is described under an Article which prescribes a specific punishment, to the exclusion of any other, is it proper to lay the charge under another which also describes the offense, but which prescribes a punishment at the discretion of the Court-Martial?

A. It is not; and, conversely, it is erroneous to charge under a specific Article prescribing a particular punishment an offense properly chargeable under the 96th Article.

- 25 Q. Is it proper to join several accused persons on one charge, or to try them on joint charges?

A. Only in the case of offenses in which a concert of action by several individuals is a requisite to their commission, and where the offenses were actually committed in concert in pursuance of a common design.

26 Q. When an Article includes two or more offenses, how should a charge under such an Article be laid?

A. The particular offense committed should be stated, adding the words, "in violation of the [such] Article of War."

27 Q. Is a charge which reads, "selling or through neglect losing, etc., in violation, etc.," properly laid?

A. It is not. Charges and specifications should never be laid in the alternative. That is bad pleading.

28 Q. What should a commanding officer do when a charge is brought before him?

A. He should personally investigate the charges, examining them as to the rank of the accused and the nature of the offense in order to determine what Court would have jurisdiction, and then endorse upon the back of the charges whether or not he believes they can be sustained.

29 Q. Should the offense or the offender be within the exclusive jurisdiction of a General Court-Martial, what will the commanding officer do?

A. He will forward them to the authority competent to order such a Court.

30 Q. What must always accompany charges against enlisted men?

A.- Proper evidence of previous convictions, in all cases where such evidence is admissible, and, in the case of a charge of desertion, a statement of service and a surgeon's report of fitness for service.

31 Q. Should a copy of charges preferred against an officer be served upon him?

A. It should be served within eight days after the officer's arrest.

DISMISSING CHARGES.

32 Q. After charges have been properly referred to a Court-Martial, has such a Court, or its Judge-Advocate, any right to withdraw, drop, dismiss, or *nolle pros* as to the whole or any part of any of such charges or specifications?

A. It has not. Nevertheless, when by a special plea or objection of the accused an issue is made as to the sufficiency of any charge or specification, the Court is empowered to sustain the plea or objection, and to quash or strike out the objectionable matter.

33 Q. Is it permissible to prefer additional charges

in a case to which the accused has already pleaded, after arraignment?

A. It is not. Such charges should be made the subject of a separate trial.

• **ORGANIZATION OF COURTS-MARTIAL.**

34 Q. How are Courts-Martial organized?

A. The convening authority designates the date, time, and place for holding a Court-Martial, details the members and the Judge-Advocate by name. At the proper hour of the day of assembly, the officers detailed for that duty meet at the designated place, the Judge-Advocate is sworn by the president of the Court, and in turn administers the oath to the members thereof. The organization is then complete.

35 Q. What uniform is worn on court-martial duty?

A. All members wear the uniform prescribed by the president of the Court; all wear the sword, except the Judge-Advocate and Counsel for the accused; all military witnesses wear the service uniform with side-arms; the prisoner wears the service uniform without side-arms.

36 Q. How does a Court-Martial assemble?

A. At its first session, pursuant to the order convening it; thereafter, pursuant to adjournment.

37 Q. What rules of etiquette must be observed in a Court-Martial?

A. The Judge-Advocate and the accused stand during the reading of the order convening the Court. and during the arraignment and plea of the accused, The Court, Judge-Advocate, and all other persons present stand while the oath is being administered to the Court and Judge-Advocate. When any person is being sworn by the Judge-Advocate, they should both stand. When any person desires to address the Court, he should first rise.

38 Q. Is the president of a Court-Martial announced?

A. He is not. The officer present highest in rank will always act as president.

39 Q. What are the duties of the president?

A. He is the mouthpiece of the Court, preserves order, and conducts the business of the Court.

40 Q. When more than one trial is held for separate and distinct offenses, what must be done in each case?

A. The Court and Judge-Advocate will be sworn in at the commencement of each trial.

JUDGE-ADVOCATE.

41 Q. What are the duties of the Judge-Advocate?

A. To act as prosecuting attorney of the Court; to note and report any irregularities in the order convening the Court; to see that all charges are technically and correctly drawn, before the Court assembles;

to acquaint the accused with the nature of the accusation against him, inform him of his right to have counsel, to have compulsory process for his witnesses, and to testify in his own behalf; to obtain a suitable room for the Court, and see that it be properly arranged; to procure the necessary stationery; to summon witnesses; to secure the services of a stenographer, when authorized; and to familiarize himself, as far as possible, with the cases to be tried, so as to be able to conduct the same in an orderly and systematic manner.

42 Q. In what respect do his duties differ from those of a civil prosecuting attorney?

A. After the plea of the accused has been made, he should so far consider himself counsel for the prisoner as to object to any leading questions to witnesses, and to any question to the prisoner the answer to which might tend to make the latter criminate himself.

43 Q. What other duties are performed by the Judge-Advocate?

A. He executes all orders of the Court; reads the convening order to the accused and arraigns him; swears the reporter, interpreters, and all witnesses; examines witnesses; keeps or superintends the keeping of the record; signs each day's record of the

proceedings; he, in conjunction with the president, authenticates the record by his signature, and after the trial, he transmits the same to the convening authority; he is the legal adviser of the Court, and will endeavor to prevent all illegal or irregular actions on the part of the latter, and will render his opinion as to points of law, whenever the same is asked by the Court.

COUNSEL.

44 Q Is a military prisoner entitled to counsel?

A. He is, as a matter of right; and it is made the duty of the commanding officer of the post or camp where the Court-Martial sits to appoint some suitable officer to defend any prisoner who requests counsel.

45 Q. What are the duties of a prisoner's counsel?

A. To guard the interests of the accused by all honorable and lawful means, preventing the introduction of any evidence which might tend to criminate the accused, so far as it may be in his power to do so; to raise objections to the jurisdiction of the Court, or to the sufficiency of the specifications whenever such objections would be proper; and to discredit the testimony of such witnesses as he may believe to be biased, or prejudiced, or to be testifying from some unlawful motive.

46 Q. Will the prisoner's counsel be required to reduce his questions and arguments to writing?

A. Whenever the record of the Court is kept in *longhand*, it will be his duty to do so.

PART SECOND

PRACTICE.

47 Q. Are the rules of practice and procedure the same in all Courts-Martial?

A. In all Courts-Martial composed of more than one officer the rules are the same.

48 Q. Should the accused have reason to believe that he will not receive fair treatment at the hands of some member of a Court-Martial, or that some of the members are his accusers, or that they are witnesses in his case, what should he do?

A. He should challenge such members of the Court.

49 Q. Should a challenged member leave the courtroom pending the deliberation on the objection?

A. It is not necessary, but usual and proper, for him to do so.

50 Q. In Courts composed of one officer only, has the accused the right of challenge?

A. He has not. When the officer composing the Court is the accuser, he will not try the case.

51 Q. What are the essentials of a challenge?

A. It must be as to one member at a time, and must be for cause stated specially to the Court.

52 Q. What causes will ordinarily sustain a challenge?

A. That he sat as a member of a Court of Inquiry investigating the charges; that he is the accuser; that he will be a witness for the prosecution; that (upon a rehearing of the case) he sat as a member on the former trial; that, in case of trial of an officer, the member will be promoted by the dismissal of the accused; that he is related by blood or marriage to the accused; that he has a declared enmity against the accused.

53 Q. When will evidence be heard in support of a challenge?

A. When the cause is not evident, and when the challenged member denies the existence of the alleged cause, or when his statement to the Court, in answer to the challenge, is unsatisfactory.

54 Q. Is it permissible to challenge the Judge-Advocate?

A. It is not.

CONTINUANCES.

55 Q. Will the postponement of a Court-Martial be permitted?

A. Only by special permission of the convening authority, which should be secured before the accused is arraigned.

56 Q. Will continuances be permitted?

A. Continuances will be granted to either party, for reasonable cause, for such time and as often as may appear to be just. The trial of a prisoner held in close confinement, however, will not be delayed longer than sixty days.

57 Q. What are the essentials of an application for a continuance on account of the absence of a witness?

A. It must be made under oath, and must show that the witness is material, why he is material, that the accused has used due diligence to procure his attendance, that he is not absent through procurement of the accused, and that the latter has reasonable ground to believe and does believe that he will be able to procure the attendance of the witness within the reasonable time stated.

58 Q. Give three reasonable grounds for a continuance.

A. (1) That the charges and specifications upon

which the accused is arraigned differ materially from those in the copy served upon him.

(2) That since the arraignment, a material and substantial amendment of the specifications has been authorized by the Court.

(3) That the accused needs time to procure counsel, who can be obtained within reasonable time.

ARRAIGNMENT.

59 Q. What is the arraignment, and how is the accused arraigned?

A. The arraignment is the act of calling and setting a prisoner before a Court to answer to a charge against him. After the Court has been organized and both parties have announced "ready," the Judge-Advocate will read the charges and specifications, separately and in order, to the accused, and will ask him how he pleads to each, whether "guilty" or "not guilty," the pleas to the specifications being first received, and then the plea to the charge.

PLEAS.

60 Q. How many kinds of pleas are there?

A. Four: (1) plea to the jurisdiction; (2) plea in abatement; (3) plea in bar of trial; (4) plea to the

general issue. The first three are also known as special pleas. These pleas should be made in the order named.

61 Q. Give an example of a special plea.

A. (1) "Guilty of the specification, except the words '[here insert the excepted words],' and of the excepted words, not guilty." (2) "Guilty of the specification, except the words '[here insert the excepted words],' and of the excepted words, not guilty, but guilty of the following words instead: '[here insert the words substituted]'. And to the charge, "Not guilty, but guilty of [here insert the description of the offense]."

62 Q. What other special pleas are there?

A. Pleas in bar, such as pleas of *autrefois acquit* or *autrefois convict* in cases involving both a civil and a military offense, and pleas to the jurisdiction. Evidence will be heard to substantiate these pleas, and will be recorded. The burden of proof is on the accused.

63 Q. What is the effect of pleading the general issue—i. e., "guilty" or "not guilty"?

A. It operates as a waiver of all proper objections to the form or substance of the charges.

64 Q. Will a Court-Martial take judicial notice of the Statute of Limitation?

A. No. It must be specially pleaded and proved.

65 Q. Can an officer or soldier who has been convicted or acquitted of a special offense be brought to trial for a minor offense contained in the one already tried?

A. No. The greater includes the lesser. Thus a soldier acquitted of desertion may not be brought to trial for absence without leave.

WITNESSES.

66 Q. How can the attendance of a military witness be procured?

A. By means of a verbal or written notice from the Judge-Advocate, when the witness resides at or near the post where the Court-Martial is to be held. If, however, he resides so far away that travel is necessary, the Judge-Advocate will send him a summons through the authority competent to order the travel.

67 Q. How can the attendance of a civilian witness be procured?

A. If he resides near the post where the Court-Martial is to be held, duplicate subpoenas will be prepared, one of which will be served upon the witness by personal delivery by the Judge-Advocate, or by any person instructed by him, the proof of such service being the return of the duplicate, properly endorsed, to the Judge-Advocate. If the witness is at

a distance, but within the State, the subpoenas shall be sent to the department commander in whose department the witness resides, with a request to have the same served.

68 Q. How can the attendance of a civilian witness be enforced, should he fail or refuse to appear?

A. The Judge-Advocate will attach him by means of a warrant of attachment of the same character as that used in the State Courts of the State wherein the witness is living, and will execute the process through any officer designated by the department commander for the purpose. Said officer will only use such force as may be necessary to bring the witness before the Court, but he may request the post commander nearest the residence of witness to furnish a military detail of sufficient strength to execute the process, and it is made the duty of the commander to furnish the same.

69 Q. What papers should the officer possess?

A. The duplicate subpoena endorsed with the affidavit of service, a certified copy of the order appointing the Court-Martial, and the warrant of attachment.

70 Q. Can the attendance of a civilian witness residing beyond the limits of the State wherein the Court-Martial is sitting be enforced?

A. It can not. Testimony in such a case must be in the nature of depositions.

71 Q. Are depositions permissible in all cases?

A. They are not permissible in cases where it is necessary that the accused should be confronted with the witnesses against him, such as capital cases.

72 Q. What method will be followed to obtain depositions?

A. A list of interrogatories to be propounded to the absent witness is submitted to the Court by the party desiring the testimony, a list of cross-interrogatories is then submitted by the opposite party, re-direct and re-cross interrogatories are added if necessary, the Court adds a list of such questions as it deems proper to properly understand the testimony, and then the Judge-Advocate issues subpoenas requiring the witness to appear before the officer by whom the depositions are to be taken, at the time and place fixed by the latter, and all the papers are forwarded to the convening authority, with a request that the depositions be procured.

73 Q. What military officers are authorized by law to take depositions and to administer oaths?

A. Judge-Advocates of Departments and of Courts-Martial, and trial officers of Summary Courts.

74 Q. If none of these be available, by whom must the depositions be taken?

A. By some civil officer empowered by law to administer oaths for general purposes.

75 Q. In forwarding interrogatories, what should the Judge-Advocate be careful to do?

A. He should transmit with them a subpoena (in duplicate) requiring the witness to appear at a stated place and date before a certain person who is to take the deposition. Particulars not ascertained may be left blank, to be filled by the officer or person by whom the subpoena is served.

COMPETENCY OF WITNESSES.

76 Q. Who are competent witnesses?

A. As a general rule, all persons are competent witnesses, the exceptions being idiots, lunatics, infants, and persons under the influence of intoxicants, as well as persons insensible to the obligations of an oath and those incapable of comprehending the same. The wife of the accused is incompetent to testify except in cases in which she is the injured party. The accused himself, when he requests to be heard, is a competent witness.

THE EXAMINATION OF WITNESSES.

77 Q. What rules of evidence are followed in Courts-Martial?

A. The common-law rules of evidence; but military men, not being ordinarily well versed in the niceties of the law, are not bound to follow these rules strictly.

78 Q. Are witnesses customarily examined in the presence of each other?

A. It is usual to ask witnesses not testifying to retire from the court-room.

79 Q. After a witness has stated his name, age, etc., what is the first question usually put to him?

A. Such an one as will at once determine his identification of the accused; as, "Do you know the accused? If so, state who he is."

80 Q. What should be the character of the next question?

A. Such that it will elicit an answer showing that the witness was or was not in a position to be acquainted with the facts set forth in the specifications.

81 Q. Are leading questions permissible, on direct examination?

A. Except for the purpose of leading the witness as soon as possible to the material point in the case, they are not. Acknowledged facts, however, may be recapitulated to a witness for the purpose of letting him understand the matter upon which he is to testify.

82. Q. What is a leading question?

A. Such an one as plainly suggests the answer desired, or which, embodying a material fact, admits of a simple "yes" or "no."

83 Q. When are leading questions permissible?

A. In cases where the witness appears to be hostile to the party producing him, or in the interest of the other party, or unwilling to testify, or where an omission in his testimony is evidently caused by want of recollection, or where the mind of a witness can not be directed to the subject of inquiry without a particular specification of it, or when called to contradict another witness.

84 Q. To what matters should the questions be confined?

A. To matters relevant to the matter in issue, unless the party promises to connect matters, apparently irrelevant, later on in the trial.

85 Q. Will a witness be permitted to give hearsay testimony?

A. Except in the case of dying declarations, and where reputation is sought to be established, or where hearsay is necessary to refresh the memory as to incidents in issue, or when the hearsay is a part of the *res gestæ* or circumstances which are automatic and

undesigned incidents of a particular act, such as exclamations by by-standers, declarations coincident with offenses, etc., hearsay testimony will not be admitted, but the witness will be confined to such facts as are within his personal knowledge.

86 Q. Will a witness be permitted to testify as to matters of opinion?

A. Only as to matters of common observation, such as drunkenness, manner, identity of person or handwriting, and as to matters of science or questions involving a knowledge of a specialty.

87 Q. Will a witness be permitted to use memoranda to refresh his memory?

A. Memoranda are permitted, provided they were made by the witness at the time of the facts or actions to which they refer.

88 Q. To what matters will the cross-examination usually be confined?

A. To matters brought out on the direct examination, but other questions may be asked for the purpose of testing the motives, bias, prejudice, or credibility of the witness.

89 Q. Are leading questions permitted on the cross-examination?

A. They are; a much greater latitude being allowed in cross-examining a witness.

90 Q. Is a witness usually re-examined after his cross-examination?

A. It is usual to re-examine him, in order that he may explain any statement brought out by the cross-examination which may be at variance with those of the direct examination, or show his motive in making such statement. He is also examined as to any new matter brought out by the cross-examination.

91 Q. What is rebuttal, and what is its object?

A. It is testimony brought out of new witnesses by the Judge-Advocate, to support the character for veracity of such of his witnesses as have been impeached by the accused, or to impeach the witnesses of the defense, or to discredit or rebut any new matter introduced by the accused and not touched upon by the prosecution.

92 Q. Is it permissible for the Court to ask questions of any of the witnesses at any time during the trial?

A. It is. The better rule, however, is for the questions by the Court to be asked of the witness after his re-direct examination. These questions should be confined to clearing up doubtful or obscure points, or to reconcile discrepancies in the testimony.

IMPEACHMENT OF WITNESSES.

93 Q. In what three ways may the credibility of a witness be attacked?

A. (1) By disproving his testimony. (2) By evidence impeaching his general reputation for truth and veracity. (3) By proof of statements made out of Court, contradictory to his testimony.

94 Q. In the last case, what rule must be followed?

A. The witness must be asked if at a specified time and place, and to a person named, he did not make a statement contradictory to his testimony, giving the words of such statement.

95 Q. Will a party be permitted to discredit his own witness?

A. Not unless he has been imposed upon, or the witness unexpectedly testifies adversely.

96 Q. Can the character of the accused be attacked?

A. Not unless he himself puts it in issue.

97 Q. Describe the two classes of acts into which offenses, in their relation to evidence, are divided.

A. Those which are in themselves unlawful, in which case proof of the act itself will suffice; and those which, though ordinarily lawful, become unlawful when committed with a particular intent, in which case not only the act itself, but the intent as well, must be fully proved before a conviction can be secured.

RULES OF EVIDENCE.

98 Q. What is the first rule of evidence?

A. The evidence must correspond with the allegations and be confined to the point in issue.

99 Q. What is the second rule?

A. It is sufficient if the substance only of the issue be proved.

100 Q. What is the third rule?

A. The obligation of proving any fact lies upon the party who substantially asserts the affirmative of the issue.

101 Q. What is the fourth rule?

A. The best evidence of which the case, in its nature, is susceptible must always be produced.

102 Q. Give three of the rules most likely to be of value to the military lawyer, regarding the introduction of testimony.

A. (1) Evidence offered for a particular purpose, if admissible for any purpose, may be admitted for general purposes. (2) A party can not complain if inadmissible evidence be admitted, when no objection is raised at the time it is offered. (3) When evidence is objected to at the trial, the nature of the objection must be distinctly stated.

103 Q. Are the proceedings of a Court of Inquiry admissible?

A. They are admissible in evidence in all cases not capital, not amounting to the dismissal of an officer, when oral testimony can not be obtained.

104 Q. Are *ex-parte* affidavits admissible?

A. They are not.

105 Q. What documentary evidence is admissible?

A. Documents whose authenticity is first established by sworn testimony, or by the seal of a Court of record in the United States, or by the seals of the Executive Departments of the Government.

106 Q. What is a confession, and when is it admissible in evidence?

A. A confession is a criminating statement, freely and willingly made without the influence of hope, or fear, by the accused. It is admissible only when the above circumstances have been clearly proved.

FINDING.

107 Q. How will the finding of the Court be governed?

A. By the evidence, considered in the light of the plea.

108 Q. Should the findings on the specifications agree with those on the charge?

A. They should not be inconsistent with each other. The accused may be found guilty of parts of the specifications, not guilty of the remainder, and

then guilty of the charge or not, as the case may be.

- 109 Q. When the evidence proves the commission of an offense less in degree than the offense charged, but of a kindred nature, what is the course to pursue?

A. The Court excepts certain words in the specification, substitutes others, finds the guilt and innocence of the substituted words, respectively, and then finds the accused not guilty of the charge, but guilty of the lesser offense.

- 110 Q. When the specifications are proved, but do not in themselves constitute an offense, what language should be used in the finding?

A. "The Court finds the facts as charged, but attaches no criminality thereto."

- 111 Q. In cases where evidence of previous convictions is admissible and the accused is found guilty, what will the Court do after the finding?

A. It will re-open the public session for the purpose of hearing such evidence, if there be any.

- 112 Q. How are previous convictions proved?

A. Those by Courts-Martial, by the records of the trials, and the duly authenticated orders promulgating them; those by Summary Courts, by the copy of the Summary Court record furnished company or other commanders, or one furnished for the purpose and certified to be a true copy by the post commander or adjutant.

PUNISHMENTS.

113 Q. What are the legal punishments for officers for military offenses?

A. Death, dismissal, suspension from rank, command, or duty, or either or any two or all of them, with or without the loss of pay or a part of pay, loss of relative rank or files, imprisonment, fine or forfeiture of pay, or reprimand.

114 Q. What are the legal punishments for soldiers?

A. Death, confinement, confinement on bread-and-water diet, solitary confinement, hard labor, forfeiture of pay and allowances, dishonorable discharge from the service, and reprimand.

115 Q. What is the additional punishment for non-commissioned officers?

A. Reduction to the ranks.

116 Q. Those for a candidate for promotion?

A. The forfeiture of all the rights and privileges conferred by the certificate of eligibility.

117 Q. What punishments are prohibited?

A. Flogging, branding, tattooing, carrying heavy logs, and extra guard duty.

118 Q. What restrictions are placed on solitary confinement? On bread-and-water diet?

A. Neither punishment should exceed fourteen

days at any one time, and the punishment should not be repeated before fourteen days have elapsed. Such confinement shall not exceed eighty-four days in any one year.

SENTENCES.

119 Q. When the punishment is one left to the discretion of the Court, what should be done?

A. The Court will ascertain if the case under consideration be one for which the limit of punishment has been fixed by the President.

120 Q. How is the character and severity of the sentence determined?

A. The members who desire to propose a sentence write it on a slip of paper and hand it to the president, who reads the proposed sentences to the Court, and the members vote upon them in order, beginning with the lightest, until a majority agree upon a sentence.

121 Q. In a case where the punishment is fixed, what is the course to pursue?

A. The members vote upon a sentence awarding the punishment.

122 Q. By what authority must a death sentence be passed?

A. By a two-thirds majority, and the record must so state.

123 Q. When an officer is dismissed the service for cowardice or fraud, what must the sentence direct?

A. That the crime, punishment, name, and residence of the delinquent shall be published in the newspapers in and about the camp, and in the State from which the offender came or where he usually resides, and after such publication, it shall be scandalous for an officer to associate with him.

124 Q. Can the decision and sentence of a Court-Martial be reviewed by any civil Court?

A. It can not; Courts-Martial being Courts of special jurisdiction, which cease to exist as soon as their object has been accomplished.

RECORD.

125 Q. What are the essentials of a Court-Martial record?

A. It must show the order convening the Court, the date of assembling, any other orders modifying the detail; that the Court was organized according to law; that the prisoner was asked if he wished to object to any member, and his answer thereto, the members present, the hour of assembling; that the members and the Judge-Advocate were duly sworn; that a new member took his seat, if any did; any change in the Judge-Advocate; that the new Judge-Advocate was

duly sworn; it must contain the entire proceedings of each day's session, including all orders, motions, propositions, objections, rulings, and arguments, statements, etc., of either party; the testimony of the witnesses; and that when the Court sat in closed session, the Judge-Advocate was not present.

126 Q. Is the record ever returned to the Court by the reviewing authority?

A. Whenever there appears to have been carelessness in its preparation, or when it shows erroneous conclusions. In such cases, the Court may either insist upon, modify, or completely change the findings.

127 Q. What would be the effect upon the conviction and sentence of a Court-Martial should the record fail to show that the Court or the Judge-Advocate were sworn?

A. They would be invalid.

128 Q. Can the sentence of a Court-Martial be carried into effect at once?

A. It can be carried into effect as soon as it shall have been approved by the officer who ordered the Court, or the commanding officer for the time being; not before.

129 Q. What is the effect of a formal disapproval, by the convening authority, of the sentence of a Court-Martial?

A. It operates as an acquittal.

130 Q. What sentences require confirmation by the President?

A. In time of peace, sentences inflicting the death penalty, or directing the dismissal of an officer.

131 Q. What beneficent power is possessed by the reviewing authority?

A. The power to pardon, and to mitigate any punishment except death, or the dismissal of an officer.

132 Q. Is the officer authorized to carry into effect a sentence of death, or of dismissal of an officer, authorized to suspend the same?

A. He may suspend the execution of the sentence until the pleasure of the President be known.

133 Q. How will the proceedings of General Courts-Martial be published?

A. In the cases of officers, and important cases of enlisted men, in general orders. Unimportant cases are published in General Court-Martial order, issued by Department headquarters.

134 Q. When only is the employment of a stenographic reporter authorized?

A. In General Courts-Martial and when the convening authority considers it necessary. An enlisted man, however, usually acts as clerk to a Court-Martial.

PRISONERS.

135 Q. Into what two classes are prisoners divided?

A. Into garrison and general prisoners; the former serving sentences of confinement, and the latter having been sentenced to dishonorable discharge.

136 Q. Are all classes of prisoners kept together?

A. Garrison prisoners will, as far as possible, be kept apart from general prisoners, and those sentenced for serious offenses will be kept apart from those sentenced by inferior Courts, or for minor offenses.

137 Q. What papers will be forwarded to the commanding officer of a post to which a prisoner is transferred for the execution of a sentence of confinement?

A. Discharge papers, if the prisoner is to be discharged, descriptive list, orders promulgating or modifying sentence, statement of conduct, while under sentence, to date of transfer, and a list of all clothing in possession of prisoner, when forwarded.

PART THIRD

INFERIOR COURTS-MARTIAL.

138 Q. What are Inferior Courts-Martial?

A. They are Courts of limited jurisdiction, composed of a less number of officers than General Courts.

SUMMARY COURTS.

139 Q. How many officers compose the Summary Court?

A. One.

140 Q. What officer is *ex-officio* the Summary Court?

A. The line officer second in rank at the post, or station, or of the command of the accused. When only staff officers are present, the second in rank will act; and when only one officer is present, he will act in all cases except those in which he may be the accuser.

141 Q. When the officer second in rank is the accuser, who tries the case?

A. The post commander.

142 Q. When the post commander is the accuser, who tries the case?

A. It is referred to the Department Commander for the necessary action.

143 Q. Why?

A. Because the post commander is the reviewing authority of the Summary Court and is disqualified from acting as accuser and reviewing judge at the same time.

144 Q. How is a Summary Court constituted?

A. No action is necessary; the law provides who shall, by virtue of his rank, be the Summary Court.

145 Q. What is the jurisdiction of the Summary Court?

A. It has jurisdiction of all enlisted men other than candidates for promotion, and over all offenses the punishment for which does not exceed confinement and forfeiture of pay for one month.

146 Q. Should the commanding officer, through mistake, refer a case beyond the power of a Summary Court to try, to such Court, what must be done?

A. The case must be referred back, with a respectful reply stating the reasons for such return.

147 Q. Has any soldier the right to object to trial by Summary Court?

A. He has; and in case of objection, his case must be referred to a Special Court-Martial.

148 Q. What are the powers of a Summary Court?

A. The power to administer oaths, to hear and determine cases, and to adjudge the punishment to be inflicted.

149 Q. Is there any clerk to the Summary Court?

A. No; one of the clerks in the adjutant's office usually acts as such.

150 Q. What rules of procedure obtain in Summary Courts?

A. With such modifications as the difference of *personnel* requires, they are the same as in General Courts-Martial. The proceedings are not recorded, but the sentence and finding are recorded in the Summary Court Book and are submitted to the post commander for his approval.

151 Q. Is a record of previous convictions submitted to the Summary Court?

A. It is in all cases where it is admissible in evidence.

152 Q. What is done with the evidence of previous convictions?

A. It is noted on the Summary Court Record.

153 Q. How is the Summary Court Record kept?

A. In a book or docket kept at each military post, and at the headquarters of a command in the field, in which shall be entered the number of the case; the name, rank, company, and regiment of the accused;

the Article of War violated; a synopsis of the specifications; the finding; the number of previous convictions, if any; the sentence; the signature of the trial officer; the action of the commanding officer, the date of same, and his signature.

154 Q. Before whom are charges cognizable by a Summary Court laid?

A. They are laid before the post commander, who will use good judgment and sound discretion in bringing offenders before the Court, especially in the case of trifling delinquencies.

155 Q. Upon what days will Summary Courts be in session?

A. Summary Courts will be opened at a fixed hour every day except Sunday.

156 Q. To whom are the records of convictions before Summary Courts furnished?

A. The records, certified to by the post commander or adjutant, are furnished the company or other commanders of the men.

SPECIAL COURTS-MARTIAL.

157 Q. How many officers compose a Special Court-Martial?

A. Any number from three to five.

158 Q. Who may appoint a Special Court-Martial?

A. The commanding officer of (a) a district, (b) a garrison, (c) a fort, (d) a camp, (e) any place other than (a), (b), (c), and (d) where troops are on duty, (f) a brigade, (g) a regiment, (h) a detached battalion, (i) any other detached command.

159 Q. What is the jurisdiction of this Court?

A. Special Courts-Martial have power to try:
 (1) Any *person* subject to military law, *except* an officer or any person subject to military law belonging to a class or classes excepted by the President, for
 (2) any *crime or offense* (not capital) made punishable by the Articles of War.

160 Q. What rules of procedure obtain in this Court?

A. Except in the cases where General Courts-Martial are specially mentioned, the rules of procedure in this Court are the same as those in General Courts, with such modifications as the difference of *personnel* will readily suggest.

COURTS OF INQUIRY.

161 Q. What is a Court of Inquiry?

A. A military body, composed of three or more officers and a Recorder, convened by proper authority to investigate the transactions of, or accusations or imputations against, officers or soldiers.

162 Q. By whom may such a Court be ordered?

A. By the President, or by any commanding officer, upon a demand by the officer or soldier whose conduct is to be inquired of.

163 Q. Why cannot such a Court be ordered without such a demand?

A. Because it might be perverted to dishonorable purposes, and might be employed, in the hands of weak and envious commandants, as engines for the destruction of military merit.

164 Q. Are the members of this Court sworn?

A. They are; the Court first swearing the Recorder, who in turn swears the Court.

165 Q. What powers do Courts of Inquiry possess?

A. Power to summon and examine witnesses and to do all things in relation to witnesses and their evidence which it is lawful for a Court-Martial to do.

166 Q. Has a Court of Inquiry the power to punish as for contempt?

A. It has not, not being, in a proper sense, a Court.

167 Q. Does the Recorder possess power to administer oaths?

A. He does.

168 Q. What method of procedure will prevail?

A. The same as in Courts-Martial.

169 Q. Do Courts of Inquiry render opinions as to the merits of cases submitted to them?

A. Not unless specially ordered by the convening authority. The usual course is to find the facts and leave the constituting authority to draw his conclusions therefrom.

170 Q. What becomes of the record of this Court?

A. It is authenticated by the signatures of the president and Recorder and forwarded to the reviewing authority.

171 Q. When a Court of Inquiry has been ordered to render an opinion upon the subject of inquiry, is it necessary that the opinion be concurred in by all of its members?

A. No. There may be a majority report and one or more minority reports.

MISCELLANEOUS.

172 Q. Which of the Articles of War are called the "General Articles"?

A. The 95th, which applies to conduct unbecoming an officer and a gentleman; and the 96th, which applies to conduct to the prejudice of good order and military discipline.

173 Q. Are erasures and interlineations permitted in the record of a Court-Martial?

A. They will be avoided, as far as possible; but, if unavoidable, must be authenticated by the signature of the Judge-Advocate.

174 Q. What must be the condition of each page of the record?

A. It must be numbered in its order, and must have a blank margin of one inch on the left side, the top and bottom.

175 Q. What are the usual hours for the sessions of Courts-Martial?

A. From nine o'clock in the morning to three o'clock in the afternoon, unless otherwise ordered.

176 Q. How will the Judge-Advocate note the presence or absence of any member of the Court?

A. By name.

177 Q. When several cases are to be tried, will the reporter be sworn for the whole term, or before each case?

A. Before each case.

178 Q. What is the Judge-Advocate's duty with regard to absent officers?

A. He must ascertain the cause of such absence. If caused by an order, he will note the order; if by illness, he will append the surgeon's certificate to the record.

179 Q. What rule must be strictly observed by the

Court in the discussion of all general and special issues?

A. During the discussion, the Court must sit behind closed doors, and the Judge-Advocate and all other persons must retire. The record must so state.

180 Q. How will the voting be conducted?

A. The voting is begun by the junior officer and is continued until all have voted, the president voting last.

181 Q. When a question is asked by a member and objection is made thereto, what is the proper manner of recording the question when the objection is sustained, and when it is overruled?

A. When the objection is sustained, the question is recorded as by a member, and not answered; but when the objection is overruled, the question is recorded as by the Court, repeated by the Judge-Advocate, and must be answered.

182 Q. What is done with documentary evidence, written pleas, objections, and, in general, papers forming a part of the proceeding?

A. They are appended to the record after the blank pages left for the reviewing authority, in the nature of exhibits, and are lettered in their order.

183 Q. How many blank pages will be left for the remarks of the reviewing authority?

A. Two.

184 Q. Should an officer charged with a warrant of attachment, having executed his warrant, be served with a writ of *habeas corpus*, what course will he pursue?

A. If from a Federal Court, it should be promptly obeyed; but a firm though respectful refusal will be returned to the writ of any State Court, citing *Ableman vs. Booth*, 21 Howard 506, and *Tarble's Case*, 13 Wallace 397.

185 Q. Can a Court-Martial relieve or excuse a member?

A. Not without proper orders from the convening authority.

186 Q. Is the dismissal of an officer by Executive order the same as a dismissal by a Court-Martial?

A. They differ in the sole particular that the first carries no stigma and does not disqualify for reappointment to office.

187 Q. Does a suspension from rank affect the right of an officer to his office?

A. It does not. He retains it the same as before, and draws the pay of the same. He, of course, loses the chance for promotion during his suspension, but his position, as regards others of like rank, is not affected by his suspension.

188 Q. Can officers of the Regular Army sit in Courts-

Martial for the trial of officers or soldiers of the Volunteers or Militia?

A. Officers of the Regular Army sitting on Courts-Martial can try regulars only; they may not sit in judgment on volunteers or militiamen. Courts-Martial for the trial of officers or soldiers of the Volunteers or Militia may be composed of Volunteer and Militia officers, either or both.

PART FOURTH

Historical Note to the Articles of War.—Previous to the passage of the Mutiny Act in 1689, military law in time of peace was unknown in England, but existed only in time of actual war, when Ordinances or Articles of War were issued by the Crown, or under its direction by the commander-in-chief, for the government of the troops. This system continued until long after the passage of annual Mutiny Acts was begun, ceasing to exist when superseded by statute in 1803. The Ordinances or Articles of War issued by Charles I. in 1672 form the basis for those of 1878, which were consolidated with the Mutiny Act in 1879, and replaced by the Army Act of 1881, now in force.

The Rules and Articles of War of the Army of the United States of America were derived from the English Mutiny Act and Articles of War in 1775, because the Continental Congress, finding it necessary to enact rules for the government of its troops, naturally turned to that system with which its members were most familiar, the same being the English Articles, those under

which the Colonial troops had come in 1754. So, in June, 1775, the Congress promulgated the Sixty-nine Articles of War for the government of the Continental troops. Additional Articles were made the next November, but were all repealed in September, 1776, and new Articles, one hundred and two in number, were adopted. These remained in force, with occasional modifications, until 1806, being formally recognized in 1789 by the First Congress of the United States. In 1806 they were re-arranged and promulgated; and revised and re-arranged by act of Congress approved August 29, 1916. (30 Stat. 650-670.)

THE ARTICLES OF WAR.

189 Q. Can the selling or losing of sheets, pillows, pillow-cases, mattress covers, shelter tents, barrack bag, great-coat strap, tin cup, spoon, knife, fork, meat-ration can, or cartridges be punished under the 84th Article?

A. No. The charge should be laid under the 84th, 94th, or 96th Articles, as the case may be and the circumstances may require.

190 Q. Explain the effect of the 62d Article.

A. A hostile arraignment of the President, Vice-President, the Congress, or the Governor or Legislature of a State, or the deliberate use of denunciatory or

contumelious words against the same, whether spoken in public, or published, or conveyed in a communication designed to be made public, constitute a violation of the Article. A sober, temperate adverse criticism of the acts of such officers in a manner clearly not meant to be disrespectful, or to excite animosity against them, is not a violation.

191 Q. What is necessary in the specification to a charge under the 63d Article?

A. The particular words or acts relied on as constituting the offense must be properly set forth.

192 Q. Who is the "commanding officer" of the officer or soldier in the 63d Article?

A. The superior who is authorized to require obedience to all of his orders from such officer or soldier, at least for the time being.

193 Q. What must appear in evidence on trial to justify a conviction under the 64th Article?

A. That the accused knew or believed that the person assaulted was, in fact, an officer of the Army and was his "superior" in rank. In this Article the superior officer need not be the commanding officer of the accused.

194 Q. When the charge under the 64th Article is disobedience, what should be alleged and appear from the evidence?

A. That the order or "command" was "lawful."
Under this Article an officer or soldier is not punishable for disobeying unlawful orders.

195 Q. What, alone, will justify a military inferior in disobeying an order or command from his superior?

A. That the order requires something to be done which is palpably a breach of law and a crime or an injury to a third party, or is of a serious character and; if done, would not be susceptible of being righted.

196 Q. What is a mutiny under the 66th Article?

A. An unlawful opposing or resisting of lawful military authority, with intent to subvert the same, or to nullify or neutralize it for the time.

197 Q. Is a refusal of soldiers, acting in concert, to obey an unlawful order punishable under this Article?

A. It is not.

198 Q. Can punishment of any character be inflicted under the 90th Article?

A. It can not; this Article providing merely for the taking of certain measures of restraint, by commanding officers.

199 Q. When an officer or soldier has been absent without leave under the 61st Article, and, returning to his station, is placed upon and allowed to perform full duty, what effect will this have upon the result of a trial under said Article?

A. The placing on duty operates as a waiver of the charge of absence without leave, and may be pleaded as a good defense upon the trial.

200 Q. Is an officer, reporting in person drunk, upon his arrival at a post, to the commanding officer to whom he had been ordered to report, chargeable under the 85th Article?

A. He is; such report being a duty.

201 Q. What kind or grade of drunkenness is meant by this Article?

A. Such a degree of intoxication, whether by the use of spiritous liquor, opium, or other intoxicating drug, as will be sufficient to materially impair the full and free use of the officer's mental or physical faculties.

202 Q. On a charge of giving intelligence to the enemy under the 81st Article, what must be proved before a conviction can be had?

A. That the intelligence actually reached the enemy.

203 Q. What rule of procedure must be followed under Articles 89 and 105?

A. The citizen aggrieved tenders a "complaint" under oath, charging the injury against a particular soldier or soldiers, describing by name (if known), regiment, etc., and accompanied by evidence of the injury,

and of the instrumentality of the person or persons accused. If such evidence be satisfactory, the commanding officer has the damage assessed by a board, and makes orders for such stoppage of pay as will be sufficient for the reparation enjoined by the Article. The commander must have a proper case presented to him; he can not act of his own motion.

204 Q. Is the jurisdiction to try crimes, authorized by the 92d and 93d Articles, exclusive in Courts-Martial?

A. It is concurrent merely with the jurisdiction of the civil tribunals. See *Coleman vs. Tennessee*, 7 Otto 513; *People vs. Gardiner*, 6 Parker 143; Digest Opinions Judge-Advocate General, 49, par. 2.

205 Q. What may the 74th Article be taken to be?

A. A formal recognition of the general principle of the subordination of the military to the civil power, and its main purpose evidently is to facilitate, in cases of offenders against the local civil statutes who happen to be connected with the Army, the execution of those statutes where, as citizens, such persons remain legally amenable to arrest and trial thereunder. A party should be surrendered though the offense be one of which a Military Court has jurisdiction, unless the military jurisdiction has already attached; in which case he may or may not be surrendered, in the discretion of the commanding officer.

206 Q. On a charge of embezzlement under the 94th Article, what would be a good defense?

A. That the funds alleged to have been embezzled were, without fault of the accused, lost in transportation, or fraudulently or feloniously abstracted.

207 Q. Define the character of conduct necessary to a conviction under the 95th Article.

A. The conduct should be such as is at once disgraceful or disreputable and manifestly unbefitting both an officer of the Army and a gentleman.

208 Q. What is the objection to a charge under the 96th Article, whose specifications set forth merely trials and convictions of the accused for previous offenses?

A. It is an attempt to try a man twice for the same offense, and does not plead any military offense.

209 Q. Under the 70th Article, a copy of a charge was duly served upon an accused officer, only it was afterwards ascertained that the charge contained a list of witnesses which was not appended to the copy. Was this a compliance with the Article?

A. Yes.

210 Q. Can a Court-Martial punish as for contempt?

A. Not to the same extent as a Court of law. It is not authorized to punish civilian witnesses who refuse to testify, without disorder.

PART FIFTH

FORMS.

[FORM 1.]

SUBPŒNA FOR A MILITARY WITNESS.

Fort ———,
————, 190—.To ———,
————.

Sir:

You are hereby summoned to appear on the — day of ———, 190—, at — o'clock — m., before a ——— Court-Martial, convened at ———, by Special Orders No. —, from ———, as a witness in the case of Artificer ———, Co. —, ——— Infantry.

————,
————,
Judge-Advocate.

[FORM 2.]

SUBPŒNA FOR A CIVILIAN WITNESS.

The United States
vs. ——— } Subpœna.
Artificer ———.

Fort ———,
————, 190—.

The President of the United States, to ———, Greeting:

You are hereby summoned and required to be and appear in person on the — day of ———, 190—, at — o'clock — m., before

a — Court-Martial of the United States, convened at — —, by Special Orders, No. —; Headquarters — —, dated — —, 190—, then and there to testify and give evidence as a witness for the — in the above-named case.* And have you then and there this precept.

Dated at —, this — day of —, 190—.

— —,
Judge-Advocate of the Court-Martial.

[FORM 3.]

SUBPCENA DUCES TECUM TO CIVILIAN WITNESS.

[The same as Form 2, down to asterisk, after which continue:] and you are hereby required to bring with you, to be used in evidence in said case, the following documents, to-wit: — —. And have you then and there this precept.

Dated at —, this — day of —, 190—.

— —,
Judge-Advocate of the Court-Martial.

[FORM 4.]

RETURN OF SERVICE.

(All Subpcenas must bear this.)

The United States.

vs.

— —.

— —, 190—.

I certify that I made the service of the within subpoena on — —, the witness named therein, by personally delivering to him in person a duplicate of the same at —, on the — day of —, 190—.

— —.

_____, }
 _____, } ss.

_____, being duly sworn, on his oath states that the foregoing certificate is true.

Subscribed and sworn to this ____ day of ___, 190____, before me.

[FORM 5.]

WARRANT OF ATTACHMENT FOR CIVILIAN WITNESS

The United States

vs.

The President of the United States, to _____, Greeting:

Whereas, _____, of _____, was on the ____ day of _____, 190____, at _____, duly subpoenaed to appear and attend at _____, _____, on the ____ day of _____, 190____, at ____ o'clock m., before a _____ Court-Martial duly convened by Special Orders, No. ___, dated Headquarters _____, _____, 190____, to testify on the part of the _____ in the above-entitled cause; and whereas he has failed to appear and attend before said _____ Court-Martial to testify as by said subpoena required, and whereas he is a necessary and material witness in behalf of the _____ in the above-entitled cause;

Now, therefore, by virtue of the power vested in me, the undersigned, as Judge-Advocate of said _____ Court-Martial, by Section 1202 of the Revised Statutes of the United States, you are hereby commanded and empowered to apprehend and attach the said _____, wherever he may be found within the _____ [State or Territory] of _____, and forthwith bring him before the said _____

Court-Martial assembled at — —, to testify as required by said subpoena.

Judge-Advocate of said — Court-Martial.

Dated _____,
_____, 190—.

[FORM 6.]

**INTERROGATORIES TO BE PRONOUNCED TO ABSENT
WITNESS.**

INTERROGATORIES.

The United States [Name of officer who is to cause
vs. To ——. depositions to be taken.]
_____. .

Interrogatories and cross-interrogatories to be propounded under the 25th Article of War to ———, a witness for the ——— in the above-entitled case, now pending and to be tried before the ——— Court-Martial, convened at ———, by paragraph ———, Special Orders, No. ———, Headquarters ———, dated ———, 190—.

1st interrogatory: _____?

2d interrogatory: _____?

[And so on.]

1st cross-interrogatory: _____?

2d cross-interrogatory: _____?

[And so on.]

DEPOSITION.

— —, the witness above named, being first duly sworn.

doth depose and say for full answers to the foregoing interrogatories, as follows:

To the 1st interrogatory: — — —.

To the 2d interrogatory: — — —.

[And so on.]

(Witness's signature.) — — —.

Subscribed and sworn to before me this — day of —, 190—.

I, — — —, the officer designated to cause the depositions of the said — — — to be taken on the foregoing interrogatories and cross-interrogatories, do certify that it was duly made and taken under oath.

EXCEPTIONS TO THE SUBSTANCE OF THE CHARGES.

[FORM 7.]

BECAUSE THE SPECIFICATION DESCRIBES NO
OFFENSE.

The United States

vs.

— — —.

In — Court-Martial, — —, 190—.

Now comes the accused, — — —, and excepts to the substance of the — specification, — charge, herein, because it does not appear from the face of the same that an offense against the law was committed by the accused, inasmuch as it charges that [Here show in what respect the specification is deficient.]

— — —, Accused.

[FORM 8.]

BECAUSE OF LIMITATION.

The United States

vs.

— ——. In — Court-Martial, — —, 190—.

Now comes the accused, — —, and excepts to the substance of the charges herein, because it appears from the face of the same that a prosecution for the offense is barred by lapse of time, because it appears to have been committed [Here show why the Statute of Limitation applies.]

— —, Accused.

[FORM 9.]

BECAUSE OF IMPOSSIBLE DATE.

The United States

vs.

— ——. In — Court-Martial, — —, 190—.

Now comes the accused, — —, and excepts to the substance herein, because it appears, from the face of the same, that the offense, if committed at all, was committed on an impossible date, to-wit: on the — of —, 1—, a date subsequent to the date for the convening of this Court [or, a date to which we have, as yet, not arrived].

— —, Accused.

[FORM 10.]

BECAUSE OF LEGAL DEFENSE CONTAINED IN SPECIFICATION.

The United States

vs.

— ——. In — Court-Martial, — —, 190—.

Now comes the accused, — —, and excepts to the substance of the charges herein, because they contain matter which is a legal

defense or bar to the prosecution, in that they contain the following:
[Here set out the matter alleged and how it constitutes a defense.]
—— —, Accused.

[FORM 11.]

BECAUSE OF LACK OF JURISDICTION.

The United States

vs.

—— —. In —— Court-Martial, —— —, 190——.

Now comes the accused, —— —, and excepts to the substance of the charge herein, because it shows upon its face that this Court, trying the case, has no jurisdiction thereof, because [Here state the reason for the lack of jurisdiction.]

—— —, Accused.

EXCEPTIONS TO THE FORM OF CHARGES.

[FORM 12.]

BECAUSE OF MISNOMER.

The United States

vs.

—— —. In —— Court-Martial, —— —, 190——.

Now comes the accused, —— —, and excepts to the form of the charges herein, because the same do not contain his name.

—— —, Accused.

[FORM 13.]

BECAUSE THE SPECIFICATION IS UNINTELLIGIBLE.

The United States

vs.

—— —. In —— Court-Martial, —— —, 190——.

Now comes the accused, —— —, and excepts to the form of the charges herein, because the offense attempted to be described therein is not set forth in plain, intelligible words.

—— —, Accused.

[FORM 14.]

FORMER CONVICTION.

The United States

vs.

— — —.

In — — Court-Martial, — —, 190—.

Now comes the accused, — — —, and, for special plea in bar herein, says that the prosecution ought not further to prosecute this cause against him, because he says that heretofore, to-wit, on or about the — day of — —, 1—,* in the — — Court for — — County, State of [or, Territory of] — —, there was duly and legally presented and filed a valid — — [complaint, information, or indictment, as the case may be] against him, to-wit, the following: [Here set out the document in its exact words, or state the reason why this cannot be done, and set out the document substantially.] the file number of which, in said Court, being No. —.† And that on, to-wit, the — day of — —, 1—, the said accusation against the said — —, in said cause No. — —, was legally tried upon its merits in said Court, and the said — — was‡ duly and legally convicted of said accusation by judgment of said Court, which is as follows, to-wit: [Here set out the judgment.] and which judgment still remains in full force and effect, and has never been reversed or avoided; and it is the judgment of a Court of competent jurisdiction. And the said — —, herein accused, says that he and — — —, so accused and convicted as last aforesaid, is one and the same person, and not other and different persons; and that the offense of which the said — — — was so convicted as aforesaid and the offense charged against him, and for which he is now being prosecuted, herein, is one and the same transaction and offense, and not other and different transactions and offenses. And this he verifies upon his oath. Wherefore he respectfully prays the judgment of this Court, that he be dismissed hence without day.

— — —, Accused.

— — —, being duly sworn, on his oath states that the foregoing special plea is true

— — —,
— — —.

[FORM 14a.]

FORMER CONVICTION BY COURT-MARTIAL.

[Follow Form 14 as far as the asterisk, and then proceed as follows:] in a — — — Court-Martial duly convened at — — — by — — — [General or Special] Orders, No. —, — — —, there was duly and legally presented a valid charge against him, to-wit, the following: [Here set out the document in its exact words, or state some good reason for not doing so, and set it out substantially.] the file number of which, in said — — — Court-Martial, being No. —.§ [Continue from dagger as in Form 14.]

[FORM 15.]

FORMER ACQUITTAL.

The United States

vs.

— — —. In — — — Court-Martial, — — —, 190—.

Now comes the accused, — — —, and, for special plea in bar herein, says that the prosecution ought not further to prosecute this case against him, because he says that heretofore, to-wit, on the — day of — —, 1—, [Continue as in Form 14 as far as the double dagger, and then proceed:] ||by verdict and judgment therein, duly and legally acquitted of said accusation, which said verdict and judgment of acquittal are as follows, to-wit: [Here set out same in exact words.] ¶and which said judgment still remains in full force

and effect and not in the least reversed or avoided, and is the judgment of a Court of competent jurisdiction. And the said — —, herein accused, in fact says that he and the said — —, so accused and acquitted as last aforesaid, is one and the same person, and not other and different persons, and the offense of which he was acquitted as aforesaid and the offense charged against him herein, and for which he is now being prosecuted, is one and the same transaction and offense, and not other and different transactions and offenses. And this he, the said — —, verifies upon his oath. Wherefore he prays judgment of this Court that he be dismissed hence without day.

— —, Accused.
— —, being duly sworn, on his oath sates that the foregoing special plea is true.

[FORM 15a.]

FORMER ACQUITTAL BY COURT-MARTIAL.

[Follow Form 14 as far as the asterisk, then follow Form 14a as far as §, then proceed as follows:] And that on, to-wit, the — day of —, 1—, the said accusation against the said — — in said case No. —, was legally tried upon its merits in said Court-Martial, and the said — — was [Continue from ¶ in Form 15 as far as ¶, and then insert the following:] which was duly approved by the convening authority, [Then proceed as in Form 15 from ¶ to the end of said Form.]

[FORM 16.]

PLEA TO THE JURISDICTION.

The United States

vs.

— —.

In — Court-Martial, — —, 190—.

Now comes the accused, — — —, and for special plea in bar herein says that the Court here ought not to take cognizance of the offense (or person) in the charge against the accused herein; because, protesting that he is not guilty of the same, nevertheless the said — — — says that [Here state fully and accurately the matter of fact relied on to defeat the jurisdiction or to show that the Court is without it.] and this he, the said — — —, verifies upon his oath. Wherefore he prays the judgment of this Court that he be dismissed hence without day.

— — —, Accused.

— — —, being duly sworn, states upon his oath that the foregoing special plea is true.

— — —,
— — —.

CONTINUANCES.

[FORM 17.]

APPLICATION.

The United States

vs.

— — —. In — — — Court-Martial, — — —, 190—.

Now comes — — — [the accused or the Judge-Advocate, as the case may be], and under oath states to the Court that — — — is a material witness in behalf of the [prosecution or defense, as the case may be] in the above-entitled and numbered case, and is absent from this Court; that the said — — — resides in — — —, — — — County, — — —; that due and sufficient diligence has been used to procure the attendance of the said — — — as a witness in behalf of the — — — herein, to-wit, by causing a lawful subpoena to issue from this Court summoning the said — — — to appear before the same on the — day of — — —, 190—, therein to testify in behalf of the — — —,

which said subpoena was placed in the hands of ——— and was by him duly served according to law on the — day of —, 190—, as appears from the return of the said ———, duly certified and sworn to [or, set out facts which excuse the use of the diligence required by law]; and the testimony of said witness is believed by the applicant to be material for the ——. And the facts which the applicant expects to establish by the said witness, ———, are as follows; to-wit: [Here set out the facts expected to be proved and such other matters as will show their materiality.] Said witness is not absent from this Court by the procurement or consent of this applicant, and this application is not made merely for delay, but this applicant has reason to believe and does believe that the attendance of the said witness, ———, can be procured within — days. Wherefore the — [prosecution or defense] moves this Court to continue this case until the expiration of the reasonable time herein stated.

———, Accused [or Judge-Advocate].

———, being duly sworn, on his oath says that the foregoing application is true.

———,
———.

[FORM 18.]

APPLICATION ON THE GROUND OF SURPRISE.

The United States

vs.

———.

In — Court-Martial, ———, 190—.

Now comes the accused, ———, and states under oath, that by an unexpected occurrence since his trial commenced, which no reasonable diligence could have anticipated, he is so taken by surprise that a fair trial of this cause cannot be had, to-wit, that

[witness died, or, unexpected evidence introduced, or, other facts which constitute the surprise]. Wherefore he moves this Court to continue this case until the — day of —, 190—.

— —, Accused.

— —, being duly sworn, on his oath states that the above and foregoing is true.

— —,
— —.

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